(A) BellSouth has failed to provide firm order confirmation in a timely and accurate manner to enable SMNI to install service at intervals comparable to what BellSouth provides to its retail customers;

(B) BellSouth has failed to identify provisioning problems in a timely manner to enable SMNI to meet customer desired due dates consistent with the service provided by BellSouth to its retail customers;

(C) BellSouth has disconnected customers seeking to migrate to SMNI service prior to the designated cutover date; and

(D) BellSouth has caused service interruptions to SMNI customers. These service interruptions have resulted in SMNI customers being unable to receive incoming calls and in some cases have also resulted in SMNI customers being unable to make outgoing calls.

As an Alternative Local Exchange Company ("ALEC"), Complainants are in the position of relying on an existing monopoly provider as its dominant supplier of end user access facilities, such as unbundled loops. Intervention by the Commission is necessary to establish performance and service quality standards for the incumbent's wholesale operations in order to ensure that BellSouth cannot, either intentionally or negligently, provide service to SMNI in a manner contrary to the clear purpose and intent of the applicable state and federal laws, rules and regulations, thereby resulting in customer perception that SMNI service is inferior to that provided by BellSouth's retail unit.

Jurisdiction

6. The Commission has statutory powers and jurisdiction over, and in relation to, telecommunications companies. This includes jurisdiction over BellSouth, the defendant in this Complaint. F.S.A. Sec. 364.01.

7. The Commission has exclusive jurisdiction in all matters set forth in Chapter 364 of the Florida Statutes, in regulating telecommunications companies, in order to: (F.S.A. Sec. 364.01(2))

(1) Promote competition by encouraging new entrants into telecommunications markets; F.S.A. Sec. 364.01(4)(d).

(2) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint. F.S.A. Sec. 364.01(4)(g).

(3) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services. F.S.A. Sec. 364.01(4)(b).

8. Sections 251 and 252 of The Telecommunications Act of 1996 contain specific provisions providing requirements of Incumbent Local Exchange Companies ("ILECS") in the provision of interconnection to competing local providers. Specifically, Section 252(c)(2)(C) provides that ILECs have the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.

9. The Commission has authority under Sections 251 and 252 of the Telecommunications Act of 1996 to approve and enforce interconnection agreements negotiated between ILECs and ALECs.[2]

Background

10. On January 29, 1996, SMNI and BellSouth signed a stipulation and agreement to establish interim rates, terms and conditions for local interconnection. On April 18, 1996, SMNI signed an operational letter with BellSouth to facilitate implementation of the exchange of traffic between SMNI and BellSouth. A copy of the operational letter is attached as Exhibit "A" to this Complaint.

11. In May, 1996, SMNI placed its first test orders for unbundled loops with BellSouth. In July, 1996, Sprint begins actively marketing its competitive local telephone service of business customers.

12. In August, 1996, SMNI begins to experience provisioning problems with BellSouth. Examples of these problems included: (1) BellSouth fails to acknowledge

[2] Iowa Utilities Board vs. Federal Communications Commission, 120 F.3d 753 (8th Cir. 1997) Part D. of the opinion)

receipt of faxed orders; (2) BellSouth fails to notify SMNI of errors on orders; (3) BellSouth fails to provide Firm Order Confirmation ("FOC") receipt within 48 hours; (4) BellSouth lines are not properly identified at the customer location; (5) BellSouth refuses to dispatch technicians during cutovers until problems occur; (6) customers are taken out of service in error if cutovers are postponed; i.e., when there are delays in cutovers to the new service BellSouth is unable to stop its own disconnect processes and customers are taken out of service, and (7) multiple provisioning problems result in lengthy installation intervals, sometimes in the 30-60 day range.

13. In September 1996, SMNI personnel attempt to resolve these provisioning problems with their operational counterparts at BellSouth.

14. Problems continue throughout October 1996. These still unresolved issues are escalated to the BellSouth account team. SMNI submits an "Issues List", Exhibit "B" attached to this Complaint, to the BellSouth order center and account team concerning ordering and installation problems encountered.

15. In November 1996, personnel from SMNI again meet with the BellSouth account team to further discuss ongoing issues. The BellSouth account team responds with a plan to resolve operational issues and to have all pending orders completed by December 31, 1996.

16. During December 1996, SMNI continues to experience operational problems in its interfaces with BellSouth. Once again these problems are escalated to the BellSouth account team.

17. By January 1997, BellSouth has accumulated a considerable order backlog in spite of its commitment to have pending orders completed by December 31, 1996. BellSouth commits to resolve the backlog problems by January 31, 1997.

18. In an effort to improve its service to SMNI, BellSouth transitions its support of interconnection activities to the account team that works with Sprint's long distance operations.

19. In February 1997, problems continue and are escalated to the BellSouth account team leader. A letter is received indicating that the source of the immediate problem was resolved and reiterating BellSouth's commitment to improvement.

20. On March 13, 1997, SMNI and BellSouth entered into an interconnection agreement, effective retroactively to January 1, 1997. This agreement was submitted to the Commission for approval on July 8, 1997 and was approved on September 23, 1997. A copy of the interconnection agreement between SMNI and BellSouth, as approved by the Commission, is attached as <u>Exhibit "C"</u> to this Complaint.[3]

21. BellSouth has violated, and is in breach of, certain provisions of the Interconnection Agreement as approved by the Commission. Section XXV of the Interconnection Agreement, Exhibit "C", expressly provides that SMNI may seek relief from this Commission to remedy BellSouth's breach of the agreement

22. SMNI is attempting to operate as an ALEC in the State of Florida, under the terms of its interconnection agreement with BellSouth. As will be shown herein, BellSouth is in breach of the interconnection agreement, in violation of the cited provisions of the Telecommunications Act of 1996, and has failed to honor certain of its commitments to SMNI. In its efforts to compete in the local exchange market in Florida, SMNI has relied upon BellSouth's representation that it would be in compliance with the terms and conditions of the Interconnection Agreement, the Telecommunications Act of 1996 and the rules thereunder as promulgated by the Federal Communications Commission ("FCC"), and the commitments made by BellSouth to SMNI. BellSouth's failure to comply is hindering and impeding SMNI in its efforts to provide competitive telecommunications services to the consumers of Florida. Commission involvement will be required in this matter if SMNI is to compete in the local exchange market in Florida, Accordingly, the Commission's determination in this matter will affect the substantial interests of the Complainants.

<u>Count One</u>

BellSouth Has Failed to Provide Firm Order Confirmation ("FOC") in a Timely and Accurate Manner

23. Complainants incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1-22.

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[3] Docket No. 970833-TP.

24. SMNI orders unbundled loops from BellSouth by submitting Access Service Requests ("ASR") via a mechanized system provided by BellSouth called EXACT.[4] An ASR contains a Purchase Order Number ("PON"), the specific features ordered, the location, type of service, quantity of loops, and the requested installation date. Upon receipt of the ASR through the EXACT electronic interface, BellSouth has committed to issue within 48-hours a FOC confirming to SMNI it has received the ASR and that it can or cannot meet the desired due date for service.

25 BellSouth has repeatedly failed to return FOCs within 48-hours of order receipt as has been committed to SMNI by BellSouth's account team. SMNI personnel must expend significant time repeatedly calling BellSouth to check on the status of FOCs. The necessity for manual intervention significantly increases SMNI's costs, particularly its acquisition costs on a per customer basis. By failing to provide SMNI a FOC in a timely manner, BellSouth makes it impossible for SMNI to confirm to its customers that it can meet their desired due dates. As a result, SMNI's reputation for service comparable to BellSouth is severely damaged.

26. Almost a year after it began testing with BellSouth, Sprint still was not receiving FOCs within 48-hours. In a letter dated April 18, 1997, Exhibit "D", attached to this Complaint, Ms. Melissa Closz, Sprint's director Local Market Development, expressed her concerns regarding BellSouth's failure to meet the 48-hour FOC commitment to Carol Jarman, Assistant Vice President-BellSouth, who is leader of the Sprint account team. In a letter dated April 25, 1997, Exhibit "E", attached to this Complaint, Ms. Jarman responded that BellSouth was adding resources to meet the 48-hour FOC commitment. As indicated in Ms. Jarman's letter of April 25, 1997, BellSouth suggested that the transition to EXACT would reduce some of the processing delays experienced by SMNI. However, notwithstanding the transition to EXACT, SMNI continued to experience missed due dates.

27. On May 1, 1997, Mr. George Head, Sprint's Vice President-Local market Integration, wrote to BellSouth's Mr. Joe Baker, Vice President-Interconnection Sales, to express his concerns regarding Ms. Jarman's April 25, 1997 letter. Mr. Head

[4] This electronic transmission medium was introduced to SMNI in May, 1997, by the BellSouth Account

emphasized that SMNI did not consider the 48-hour interval for FOC return after receipt of an ASR to be an acceptable interpretation of the SMNI Interconnection Agreement, which provides that "BellSouth must establish and adhere to competitive intervals for the delivery of FOCs." Mr. Head noted that even in a manual environment, a 24-hour turnaround is readily achievable.[5] A copy of Mr. Head's May 1, 1997, letter is attached as Exhibit "F" to this Complaint.

28. In a May 5, 1997 letter to Sprint's George Head, Exhibit "G" attached to this Complaint, BellSouth's Joe Baker discussed several actions being taken by BellSouth to improve its service to SMNI and confirmed, once again, BellSouth's commitment to meeting the 48-hour interval for returning FOCs.

29. On June 24, 1997, at Sprint's request, Sprint and BellSouth met at BellSouth's Birmingham, Alabama offices to discuss current process improvement procedures being implemented by BellSouth to meet its obligations to provide timely and accurate FOCs to SMNI. BellSouth once again expressed commitment to meet its obligations to SMNI.

30. BellSouth's service being provided to SMNI under the Interconnection Agreement is not only violative of the terms and conditions of the agreement but are clearly inferior to that service being provided to BellSouth's end users.

31. BellSouth's 48-hour commitment presumably is designed to allow the ALEC to comply with the quality of service standards established for retail obligations as set forth in the Florida Administrative Regulations applicable to telephone companies. That regulation provides:

> (2) Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in

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Team assigned to Sprint and SMNI as ALEC customers.

[5] SMNI has been operating under the Interconnection Agreement attached as Exhibit "C". The incidents referenced in this complaint took place while this agreement was in effect. That agreement was approved by the Commission on September 23, 1997. Sprint has a separate agreement with BellSouth which was the result of negotiation and arbitration. The Commission arbitrated the issues of time frames for the return of FOCs in the Sprint agreement. The Commission issued a ruling that is incorporated in Section 28.6.3 of the Sprint/BellSouth Interconnection Agreement, which states that "BellSouth agrees to enter the service order promptly on receipt and provide Firm Order Confirmation ("FOC") within four (4) hours of receipt of a correct Local Service Request. For services requiring a manual FOC, BellSouth will provide the FOC within 24-hours of receipt of a correct LSR."

any calendar month shall normally be satisfied in each exchange or service center within an interval of three working days....

32. Even if SMNI, as an ALEC, is not subject to Commission quality of service standards as a matter of law, as a practical matter SMNI will continue to be judged by these criteria because this is what the public has come to expect, if not demand, from local telephone companies.

33. In addition to being far inferior to the service expected by retail customers, BellSouth's service is also inferior to what it agreed to provide SMNI in the Interconnection Agreement signed on March 13, 1997, and retroactively effective to January 1, 1997. Relevant portions of the Interconnection Agreement are reproduced and highlighted below:

Section IV.D.1 of the Interconnection Agreement states:

> Installation intervals for service established via unbundled loops will be handled in the same timeframe as BellSouth provides services to its own customers, as measured from date of customer order to date of customer delivery. BellSouth will make best efforts to install unbundled loops and other network elements by the Customer Desired Due Date ("CDDD") where facilities permit. [Emphasis added.]

Section V.E.6 of the Interconnection Agreement states:

> BellSouth will establish and adhere to competitive intervals for the delivery of FOCs, DLRs and facilities. Such intervals need to ensure that facilitates are provisioned in time frames and according to standards that meet or exceed those that BellSouth provides to itself for its own network and end users. Intervals should not exceed the Customer Designated Date ("CDDD"). [Emphasis added.]

34. The Interconnection Agreement clearly provides that BellSouth will establish and adhere to competitive intervals for the delivery of FOCs and that the intervals will meet or exceed those that BellSouth provides to itself.

35. Despite all of the meetings and correspondence exchanged between SMNI and BellSouth, SMNI continues to experience problems in obtaining timely and accurate FOCs.

36. Attached as Exhibit "H" is a chart showing data compiled since April 1997 showing late FOCs. It is noteworthy that, as recently as August 1997, in a seven day period between August 15 and 22, 1997, when SMNI submitted only eight ASRs to BellSouth, only half were confirmed by BellSouth with a FOC within 48-hours. Three FOC's were received 72-hours later and the fourth eight days later.

37. In April 1997, 95 percent of the FOCs returned from BellSouth were received by SMNI beyond the 48-hour commitment. In May 1997, 50 percent did not meet the 48-hour commitment. In June, 73 percent did not meet the commitment. In July, 40 percent were late and in August, 46 percent were late. In September, 42 percent did not meet the 48 hour commitment.

38. It is obvious to SMNI and to its customers that installation intervals are not "being handled in the same time frame as BellSouth provides to its own retail customers," in accordance with Section IV.D.1 of the contract. BellSouth is not "adhering to competitive intervals for the delivery of FOCs" and "facilities are not being provisioned in time frames that meet or exceed those that BellSouth provides for its own network and end-users," as BellSouth has agreed to provide in Section IV.D.1 and V.E.6 of the Interconnection Agreement.

39. SMNI believes that the Commission should institute performance measurements and service quality standards governing the provisioning of wholesale service to enable ALECs to provide service that is equal in quality to the service consumers have come to expect from local telephone companies.

40. This poor performance by BellSouth in the ordering and provisioning environment has caused SMNI to halt further market expansion plans until BellSouth demonstrates it can provide wholesale service that enables SMNI to provide quality service to its customers.

Count Two:

BellSouth has Failed to Identify Provisioning Problems In a Timely Manner to Enable SMNI to Meet Customer Due Dates Consistent with the Service Provided by BellSouth To its Retail Customers.

41. Complainants incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1-40.

42. BellSouth has repeatedly failed to notify SMNI in a timely manner of facilities issues which prevent SMNI from meeting its customer's desired due date. BellSouth's failure to notify SMNI of the facilities issues in a timely manner prevents SMNI from notifying its customers of a due date change until after the customers have scheduled other work activities around the original due date.

43. Exhibit "I" indicates instances in the April-September time period which are representative of those situations where BellSouth failed to identify sites where facilities upgrades had to be completed prior to installation of the services requested by the customer. When BellSouth notified Sprint of these facilities problems at the last minute SMNI had to contact its customers to tell them that installation of SMNI service would be delayed. These incidents caused Sprint to appear inept and unresponsive to its customers.

44. BellSouth has been haphazard in its notification to SMNI of facilities problems affecting the provisioning of orders. This conduct would not be tolerated in its provision of service to its retail customers and should not be tolerated in the provision of service to wholesale customers. Section 25-4.066 of the General Service Provisions applicable to telephone companies addresses the topic of provision of service where facilities are not available.

> (5) Where facility additions are required to make service available, the applicant shall be further advised as to the circumstances and conditions under which service will be provided and as soon as practicable an estimated date when service will be furnished. [Emphasis added.]

45. BellSouth's failure to identify facilities problems on a timely basis also is in contravention of the Interconnection Agreement.

Section IV.B.5 of the Interconnection Agreement states:

> BellSouth shall provide SMNI access to its unbundled loops at each of BellSouth's Wire Centers. In addition, if SMNI requests one or more loops serviced by Integrated Digital Loop Carrier or Remote Switching technology deployed as a loop concentrator, BellSouth shall, where available, move the requested loop(s) to a spare, existing physical loop. If, however, no spare physical loop is available, <u>BellSouth shall, within forty-eight (48) hours of SMNI's request, notify SMNI of the lack of available facilities</u>. SMNI may then, at its discretion, make a network element request for BellSouth to provide the unbundled loop through the demultiplexing of the integrated digitized loop(s). [Emphasis added.]

Section IV.C.8 of the Interconnection Agreement states:

> BellSouth shall exercise best efforts to provide SMNI with the "real time" ability to schedule installation appointments with the customer on-line and access to BellSouth's schedule availability beginning in the second calendar quarter of 1997. In the interim, <u>BellSouth will make best effort[s] to install unbundled loops and other network elements by the Customer Desired Due Date ("CDDD") where facilities permit</u>. [Emphasis added.]

Section IV.D.1 of the Interconnection Agreement states:

> <u>Installation intervals for service established via unbundled loops will be handled in the same timeframe as BellSouth provides services to its own customers, as measured from date of customer order to date of customer delivery</u>. BellSouth will make best effort to install unbundled loops and other network elements by the Customer Desired Due Date ("CDDD"). [Emphasis added.]

Section IV.F.1 of the Interconnection Agreement states:

> BellSouth shall provide SMNI with information sufficient to determine an end user's existing service and feature configurations.

Section V.E.6 of the Interconnection Agreement states:

> <u>BellSouth will establish and adhere to competitive intervals for the delivery of FOCs, DLRs and facilities. Such intervals need to ensure that facilities are provisioned in time frames and according to standards that meet or exceed those that BellSouth provides to itself for its own network</u>

and end users. Intervals should not exceed the Customer Designated Date ("CDDD"). [Emphasis added.]

46. Although Section IV.B.5 of the Interconnection Agreement provides that BellSouth will identify the facilities available to prospective SMNI customers, on several recent occasions BellSouth has not reported to SMNI that facilities were not available until the day before the customer desired due date, subsequent to issuance of the FOC.

47. The issue of provisioning problems which impact SMNI's ability to meet customer desired due dates has been raised to BellSouth through conference calls as well as in writing as demonstrated by the letter sent by Ms. Closz on April 18, 1997, referenced previously and attached as Exhibit "E." On May 19, 1997, Ms. Closz sent another letter to BellSouth addressing this topic. See Exhibit "J." attached to this Complaint. The following examples indicate that BellSouth continues to fail to make timely reports of facilities problems resulting in missed due dates by SMNI.

48. On August 1, 1997, SMNI used BellSouth's EXACT interface and submitted an ASR for a DS1 with a customer desired due date of August 11, 1997. A week later on Friday, August 8, BellSouth notified SMNI that facilities were not available for the scheduled cutover on the next business day, Monday, August 11, 1997. The customer was finally migrated to SMNI service on Friday, August 15, 1997.

49. On August 8, 1997, SMNI used BellSouth's EXACT interface and submitted an ASR for unbundled local loops with a Customer Desired Due Date ("CDDD") of August 15, 1997. SMNI received verbal FOC on August 13, 1997. On August 14, one day prior to the scheduled service migration and one day after FOC had been verbally communicated to SMNI by BellSouth, BellSouth notified SMNI of the unavailability of facilities. The unbundled local loops were finally installed on August 22, 1997. BellSouth continues to indicate it is capable of provisioning an order when in reality BellSouth has issued a FOC without confirming that facilities are available to fulfill the customer's requested service order.

50. Another incident involving a facilities problem occurred relating to an order dated August 8, 1997, when SMNI submitted an ASR for a DS1 with a CDDD of August 15 using the EXACT interface. SMNI received a verbal FOC on August 13,

1997. On August 14, one day prior to the scheduled service migration and one day after receiving a verbal FOC, BellSouth notified SMNI of a facilities problem. The DS1 was finally installed on August 26, 1997, seven business days late. If the facilities problems had been properly identified, BellSouth would not have given SMNI the verbal FOC on August 13, 1997.

51. During the week of August 15-22, 1997, on three occasions BellSouth failed to notify SMNI of lack of facilities until the day of or the day prior to the due date. In each case, the SMNI customer had scheduled other vendors as well as internal employees to meet the due date. The late notification increased the customers' costs of conversion.

52. In addition to failing to identify facilities needed to provision an order until after FOC has been sent, BellSouth has been reluctant to provision SMNI orders where certain network equipment configurations exist within BellSouth physical facility network. This happened in the case of SMNI customer, Collegiate Village Inn ("Collegiate"). The delays experienced by Collegiate caused inconvenience to the customer and harm to SMNI's reputation.

53. Attached to this Complaint, as Exhibit "R", is the affidavit of George Pegram, general manager of Collegiate. Collegiate is a private dormitory housing students attending the University of Central Florida. The conversion from BellSouth to SMNI local service was to occur during Spring break in mid-March to minimize inconvenience to the dormitory residents. The conversion did not take place until May 1. BellSouth had provisioned its local service to Collegiate using network equipment configured as a Digital Access Cross-Connect mapped Integrated Subscriber Line Concentrator ("DACS mapped Integrated SLC"). This equipment is used to maximize usage of the physical facilities extending to customer premises. When SMNI won the customer, it placed orders for Unbundled Network Elements ("UNEs") and requested that the same facilities be used in provisioning Sprint's service to Collegiate. BellSouth told SMNI that its automated systems were unable to process, assign and work the orders meaning that their systems and processes did not support reuse of the existing facilities. Although BellSouth technicians were able to understand the SMNI service request and

were able to manually perform the functions necessary to properly complete the SMNI service request, BellSouth was reluctant to process the order for Collegiate, because it might "set precedent" by agreeing to provision competitive services utilizing non-standard procedures. BellSouth would not agree to provision these lines until after SMNI escalated its concerns to a BellSouth executive team.

54. In addition to the voice lines, Collegiate's telecommunications service from BellSouth included two DS1 circuits. SMNI originally ordered one of the DS1s incorrectly, causing three to four days delay while a supplemental order was issued to correct the DS1 provisioning. Once corrected, the customer's PBX vendor, BellSouth, experienced several problems in properly configuring the PBX to handle the new lines. New PBX cards had to be ordered and several different "options settings" had to be attempted before the system worked properly. The local service migration to SMNI, which originally was scheduled to be completed in March, was finally completed on May 1, 1997. While SMNI appreciates the technical limitations that must be dealt with before a new service is provisioned, SMNI believes these limitations are identified and resolved expeditiously in the BellSouth retail environment and should be dealt with in a similar manner in the wholesale provision of service. It is, however, completely unacceptable to refuse to provision an order because it might "set precedent" as demonstrated by the Collegiate example. BellSouth's conduct is inexcusable and is indicative of the environment in which ALECs, such as SMNI, must operate.

<u>Count Three:</u>

BellSouth has Disconnected Customers Seeking to Migrate to SMNI Service Prior to the Designated Cutover Date.

55. Complainants incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1-54.

56. SMNI customers also have been subject to seemingly random, untimely disconnections associated with the service conversion process. On numerous occasions BellSouth has been unable to stop service disconnection orders from being processed when the cutover to SMNI service has been delayed. BellSouth issues its own internal

orders to disconnect the customer's BellSouth service immediately prior to the activation of and turn-up of the local loop, enabling the "new" service to be provided by SMNI. When a cutover is delayed, BellSouth must cancel the previous disconnect order and reissue a new disconnect order with a revised due date. On numerous occasions BellSouth has failed to cancel a disconnect order and reissue a new disconnect order resulting in the customer's service being disconnected prior to the cutover to SMNI.

57. On May 6, 1997, BellSouth postponed a customer's cutover to SMNI due to BellSouth's lack of facilities. The customer had been scheduled to migrate service to SMNI on this same day. SMNI rescheduled the migration internally and with the customer for June 16, 1997 at BellSouth's request. However, BellSouth failed to revise the due dates on its internal orders and the customer was disconnected on May 6, 1997. The customer's service was restored by BellSouth later that day. On May 19, the customer called SMNI and stated that he was very unhappy that his service was not yet converted. On May 30, 1997, SMNI, the customer and BellSouth agreed to change his service conversion date to June 12, 1997.

58. Another customer was scheduled to convert his service to SMNI on May 9, 1997. This was the third conversion date set for this customer due to BellSouth's inability to accomplish the cutover on two previously scheduled occasions. On May 9, 1997, BellSouth once again notified SMNI of the need to reschedule the service conversion. BellSouth, however, failed to properly revise its internal orders and the customer was taken out of service in error on May 9, 1997. BellSouth informed SMNI later that night that the customer's service was restored. On May 10, 1997, however, the customer called SMNI stating that multiple lines were still out of service. SMNI contacted BellSouth and submitted a trouble ticket on the customer's behalf. BellSouth determined that one line had been wired to the wrong equipment and another line had a broken jumper at the BellSouth central office. BellSouth repaired both lines and notified SMNI that day that the customer was back in service. SMNI performed additional testing on the lines and determined that the customer's rotary lines were not functioning properly. SMNI made a subsequent call to BellSouth to inform them of this issue. It took

two additonal days for BellSouth to resolve all the problems associated with this service conversion.

59. On May 22, 1997, BellSouth disconnected another customer after it postponed the customer's migration of service. Numerous lines within a rotary group were disconnected. They were reconnected the next day, May 23, 1997.

60. BellSouth disconnected several lines prior to May 29, 1997, the time of the customer's scheduled migration. During the migration, BellSouth discovered the conversion could not take place because several lines were provisioned on a BellSouth Integrated Subscriber Loop Carrier ("ISLC") that did not have additional capacity. The customer was unable to wait for changes to be completed and requested a new migration date. That customer's lines were not fully restored until June 3, 1997. On June 4, 1997, BellSouth disconnected the customer's lines again. They were not restored until later the same day.

61. The SMNI/BellSouth Interconnection Agreement contains provisions that specifically outline the procedures that are to be followed prior to migration of a customer.

Section IV.D.2 of the Interconnection Agreement states:

> **On each unbundled network element order in a wire center, SMNI and BellSouth will agree on a cutover time at least 48-hours before that cutover time. The cutover time will be defined as a three-hour window within which both the SMNI and BellSouth personnel will make telephone contact to complete the cutover.**

Section IV.D.3 of the Interconnection Agreement states:

> Within the appointed 60-minute cutover time, the SMNI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.

Section IV.D.4 of the Interconnection Agreement states:

> If the SMNI contact fails to call or is not ready within the appointed interval and if SMNI has not called to reschedule the work at least eight

> hours but not less than two hours prior to the start of the interval, BellSouth and SMNI will reschedule the work order.

Section IV.D.5 of the Interconnection Agreement states:

> If the BellSouth contact is not available or not ready at any time during the 60-minute interval, SMNI and BellSouth will reschedule and BellSouth will waive the non-recurring charge for unbundled elements for that interval.

62. It is apparent from the recitation of the May incidents that BellSouth has failed to comply with Sections, IV.D.3, IV.D.4 and IV.D.5 of the Interconnection Agreement. BellSouth has told SMNI that when disconnect orders are canceled too close to the actual disconnect date, they are not singled out for special processing, and therefore they are not identified by BellSouth's systems in time to stop the service from being disconnected. The result is that customers are taken out of service in error causing serious disruption to the customer's ability to do business and damaging the customer's confidence that SMNI can effectively manage service conversion and provide quality service.

63. BellSouth has suggested that late notification by SMNI of the need for a cutover delay is responsible for disrupting the conversion process and, consequently, BellSouth cannot be held responsible for the untimely disconnection of the customer's service. Notwithstanding BellSouth's assertions that cutover delays are SMNI's fault, the facts demonstrate that the majority of the cutover delays result from last minute notification from BellSouth that facilities or engineering problems necessitate delaying the cutover. Regardless of whether a customer decides to delay cutover or whether provisioning problems require a delay in the cutover, SMNI customers should not have to risk service interruption in the conversion process. It is doubtful these customers would have experienced any service interruptions if they had decided to remain BellSouth customers but simply were electing to reprovision current BellSouth services with new or upgraded BellSouth services.

64. BellSouth must be required to establish a process that will enable service disconnection orders to be stopped, regardless of the timing or reason for the request. Implementation of electronic bonding should ensure that ILEC disconnect orders and

ALEC migration orders are processed concurrently. If BellSouth is not required to implement procedures to intercept its internal disconnect process, customers who select an ALEC as their local service provider are subject to disconnections because of BellSouth's inadequate internal processes. These service interruptions act as a deterrent to switching to an ALEC and damage SMNI's credibility to manage the integrity of the service conversion process.

65. Customers neither understand, nor care, that BellSouth, not SMNI, controls the service disconnection process. They care only about the loss of business and productivity that results when their local telephone service doesn't function properly. These service outages damage SMNI's reputation and impede its ability to establish and expand its competitive local service offerings in central Florida.

66. The examples noted above represent only a small fraction of the service disconnection occurrences that SMNI customers have endured. They typify a BellSouth process problem that has existed since SMNI began placing unbundled loop orders in July 1996. The problems experienced by SMNI customer WMFE detailed in the affidavit of Ms. Julia Downs, director of human resources and administration occurred in October 1996, but similar problems continue today. See Exhibit "K." attached to this Complaint.

Count Four:

BellSouth has Caused Service Interruptions to SMNI Customers That Have Resulted in SMNI Customers Being Unable to Receive Incoming Calls and in Some Cases Have Also Resulted in SMNI Customers Being Unable to Make Outgoing Calls.

67. Complainants incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1-66.

68. SMNI has experienced service interruptions on numerous occasions resulting from BellSouth call routing errors, translations problems and failure to properly provision and implement interim number portability. These failures prevent calls from being completed to SMNI customers. Such incidents have created customer dissatisfaction and have tarnished SMNI's reputation as a reliable service provider.

69. On Monday morning, May 19, 1997, BellSouth began implementation of a trunking reconfiguration project, which was intended to provide additional call routing capacity between the SMNI and BellSouth networks. BellSouth reversed the routing instructions for interoffice trunking in error creating an "all circuits busy" condition for callers trying to reach SMNI customers. Customers were impacted for three hours and SMNI received a number of trouble tickets.

70. On May 30, 1997, BellSouth identified a translation problem in a BellSouth local switch in response to SMNI's trouble report. Calls to SMNI customers processed via the primary transmission route were completed, while calls which overflowed to the secondary route received a recording stating, "This number is no longer in service," or "This number cannot be completed as dialed." This service problem occurred for at least seven hours before it could be isolated and resolved by BellSouth.

71. On June 6, 1997, a Simulated Facilities Group ("SFG") that contains network instructions for Local Number Portability functionality was taken out of service in error. This resulted in calls placed to SMNI customers being blocked for more than two hours. These service-impacting incidents were communicated to BellSouth via the standard trouble-reporting process as well as via personal telephone conversations with BellSouth's Sprint Account Team and maintenance personnel.

72. On June 18, 1997, George Head, Sprint Vice President-Local Market Integration, sent a letter, attached as Exhibit "L" to Joe Baker, BellSouth Vice President Sales-Interconnection Services, in which he expressed concern about the damage these incidents caused to SMNI's customer relationships and their corresponding impediment to SMNI's ability to establish itself as a local service competitor.

73. These concerns were further reinforced at the executive level meeting referenced earlier, which was conducted at BellSouth's Birmingham offices on June 24, 1997. At that meeting BellSouth informed SMNI that a software change in their Lucent 1AESS switches would be required in order to ensure that "human error" would not result in recurring incidents. BellSouth attempted to give SMNI assurances that training and supervisory procedures had been put in place to minimize the chances for "human errors" until the preventive software could be installed.

74. At 5:00 p.m. on June 24, several hours after BellSouth executives assured SMNI that steps were taking place to prevent recurrences of these service interruptions, BellSouth once again disconnected numerous customers because of the local number portability problems identical to those experienced on June 6, 1997. It is apparent that until a software change is in place, there is a significant risk that significant outages will occur to ALECs utilizing number portability. Every customer served out of the Magnolia 1AESS switch with local number portability was impacted by this outage.

75. On July 1, 1997, at Sprint's request, because of these outages, Joe Baker issued a letter for SMNI sales personnel to present to customers, where appropriate, stating BellSouth was responsible for the latest service interruption. See Exhibit "M." attached to this Complaint. While Sprint appreciates BellSouth's willingness to take responsibility for the incidents, it is little comfort for SMNI customers who had just endured yet another service interruption. Also attached as Exhibit "N" to this Complaint is a letter dated July 8, 1997, from Carol Jarman to Melissa Closz enumerating guidelines that have been implemented by BellSouth to prevent number portability problems.

76. While executives attend meetings and send letters concerning process improvement, customers suffer until permanent solutions are developed. The effect of service interruptions is succinctly set forth in the affidavits of Bill Pickering, Exhibit "O" and Sean Laney, Exhibit "P." Bill Pickering, Independent Marketing National Sales director for Jefferson-Pilot, a large insurance agency, describes why he left SMNI and returned to BellSouth. During Jefferson-Pilot's six months as a SMNI customer, it experienced several outages where customers could not make calls to the firm. On May 19, 1997, BellSouth reversed the call routing which prevented calls placed to the "old" BellSouth numbers from being forwarded to their associated SMNI numbers. On May 30, 1997, Jefferson-Pilot was a victim of the "translations problem" in one of the BellSouth switches. Customers attempting to reach Jefferson-Pilot received recordings stating, "This number is no longer in service," or "This call can't be completed. Please try again." Jefferson-Pilot also was a victim of the June 6 and June 24, 1997, local number portability problems. The June 24 incident proved to be the last straw for Jefferson-Pilot, which then decided to go back to BellSouth. On July 7, 1997, when

BellSouth technicians were attempting to reinstate BellSouth service, incoming calls to Jefferson-Pilot were blocked for more than six hours. BellSouth technicians were unable to "unhook" the ported SMNI numbers.

77. While the Citrus Club is still a SMNI customer, Sean Laney, club manager, indicates that one more outage could send the Club back to BellSouth. Laney's business is a private lunch and dinner club located on the top floor of a downtown bank building. He notes that he never had service interruption problems until he switched to SMNI. Citrus Club has experienced several major outages, including the May 19, 1997 incident referenced earlier, when BellSouth reversed SMNI's routing, and June 3 and July 3, 1997 incidents when BellSouth equipment problems also resulted in service outages, and the June 6 and June 24, 1997 SFG problems as referenced earlier in this Complaint. The Citrus Club also was a victim of the May 30, 1997 incident involving the "translations problem" in one of BellSouth's local switches. Callers to the Citrus Club got a recording stating "The number you are trying to call is no longer in service," or "Your call cannot be completed. Please try again." This is disastrous to a business that relies almost exclusively on reservations.

78. BellSouth describes the incidents that led to these service outages as "human error." They represent, however, lack of processes and procedures at BellSouth and lack of training of BellSouth employees to enable those employees to identify and rectify operational problems that occur when ALECs interconnect with BellSouth's network. The simulated facilities group outages present an even more substantial concern to SMNI in that there is, as of this date, no permanent solution to prevent these outages from recurring. This risk is entirely beyond SMNI's control. Until a permanent solution is implemented, the risk of service interruption will continue to be much greater for SMNI customers than the risk of service interruption to BellSouth customers.

Other Material Information

79. Complainants incorporate by reference, as if fully set forth herein, the allegations contained in paragraphs 1-78.

80. There is no doubt that customers will have little reason to obtain local exchange service from an ALEC if the financial incentives they receive are offset by an inferior service that jeopardizes the ability of those customers to conduct their daily business. The affidavit of Rocky Santomassino, Vice President and Secretary-Treasurer of J. Rolfe Davis Insurance, Exhibit "Q", attached to this Complaint is illustrative of the multitude of problems experienced by SMNI customers and the customer's perception in having to deal with unreliable telephone service in a business environment. Santomassino states his own credibility suffered because of his recommendation to switch to SMNI when numerous problems occurred during the migration.

81. The delays that occurred during the March service migration were a result of BellSouth not having the proper line cards available in their central office to provision all J. Rolfe Davis' lines correctly. When Mr. Santomassino was notified of the delay occasioned by the improper line cards, he requested that the migration be rescheduled to March 27, 1997. On April 1, BellSouth "inadvertently" disconnected the remote call forwarding functions preventing calls to "old" BellSouth numbers to be forwarded to the new SMNI numbers.

82. J. Rolfe Davis' second set of problems occurred in August when it purchased another agency and attempted to establish telephone service for the staff of the merged agency at a new satellite office located several blocks from J. Rolfe Davis' main offices. The delays experienced during the August installation were due, in part, to SMNI and in part to BellSouth. BellSouth delays were due to a lack of cable facilities at the new service location. On two occasions SMNI contributed to the delay by improperly ordering some of the services needed at the new location. In those instances SMNI had to resubmit supplemental orders which were then placed at the end of BellSouth's provisioning queue. The premature disconnect of the lines at the old address was the result of BellSouth issuing disconnect orders with incorrect times. In addition, BellSouth

failed to activate the remote call forwarding function and to issue orders to remotely call forward the fax line.

83. The J. Rolfe Davis story and its effect on customers is indicative of the environment ALECs face today in attempting to provide a competitive local exchange telecommunications service and is representative of the events that led SMNI to file this complaint.

84. It is important to note that Sprint/SMNI is not claiming to be error free and is not attempting in any way to hold BellSouth accountable for Sprint/SMNI actions. That is why the processes and service incidents referenced in this Complaint are exclusively related to BellSouth performance accountabilities that are beyond Complainant's control.

85. Complainants are without sufficient knowledge, information or belief as to which issues of material fact will be disputed by defendant.

86. The Complaint herein is timely filed.

REQUEST FOR RELIEF

WHEREFORE, based on the foregoing, Complainants request that the Commission:

(1) Assert jurisdiction over this Complaint;

(2) Expeditiously conduct a hearing on the matters complained of herein;

(3) Order BellSouth to cease and desist from its anticompetitive practices in the provision of unbundled loops;

(4) Order BellSouth to comply with terms and conditions of its Interconnection Agreement with SMNI;

(5) Order BellSouth to comply with all provisions of Sections 251 and 252 of the Telecommunications Act of 1996, including but not limited to Section 252(c)(2)(C);

(6) Order BellSouth to immediately process to completion all pending FOCs, to provide FOCs in a timely and accurate manner, and to honor BellSouth's commitment to SMNI to issue FOCs within 48 hours of receipt of order from SMNI;

(7) Order BellSouth to notify SMNI, within 48 hours, of facilities limitations and/or provisioning problems in connection with SMNI service requests;

(8) Order BellSouth to immediately modify its methods and procedures for handling customer migrations to an ALEC, such as SMNI, so that customers will not suffer an inappropriate disconnection, service interruption or outage;

(9) Order BellSouth to immediately devote adequate resources to the operation of its Local Carrier Service Center to assure that orders received from

ALECs, such as SMNI, seeking to transfer customers from BellSouth to the ALEC, can be processed on a timely basis, with the same degree of reliability, and within the identical time frame as BellSouth provides service to its own end users;

(10) Order BellSouth to establish dates certain for the implementation of electronic bonding for Operations Support Systems in accordance with standards set at national fora such as Alliance for Telecommunicastion Industry Solutions so that all orders from ALECs for migration of customers and installation of new services are "handled in the same timeframe as BellSouth provides to its own customers," in accordance with Section IV.D.1 of the Interconnection Agreement;

(11) Institute an investigation into BellSouth's retail operations to determine BellSouth's current provisioning intervals for BellSouth retail customers and require BellSouth to demonstrate that competitive services are provided at parity with services BellSouth provides to its own end users, including, but not limited to, performance measures and service quality standards, training manuals, methods and procedures used by BellSouth to train their technicians concerning remote call forwarding, and the functionality necessary for the implementation of local number portability, including trouble resolution procedures;

(12) Order BellSouth to file periodic reports concerning its current provisioning intervals to its end users as compared to its actual performance in providing services to ALECs;

(13) Order BellSouth to establish expedite and escalate procedures for loop order processing;

(14) Order such other and further relief as the Commission may deem just and reasonable under the circumstances.

Respectfully submitted,

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